

TRANSPORTATION PERFORMANCE AUDIT BOARD

Thursday, March 31, 2005
10:00 a.m. - 12 Noon
Conference Rooms A/B/C
John A. Cherberg Building
Olympia, WA

- Minutes -

The meeting was called to order by Chair Doug Hurley at approximately 10:05 a.m. Members present were: Haugen, Hurley, Noguchi, Ostrowski, Perteet, Pyles, Swecker, Woods and Yates. Representative Wallace was there attending the House Democratic Caucus. Representative Buck also attended.

1. Report of the Chair

- a. Minutes - The minutes of the February 11, 2005 TPAB meeting were approved.
- b. Budget Update - Nate Naismith, LTC staff, presented the current TPAB budget in a new format requested by the Chair at the February 11 meeting.

Chair Hurley announced two administrative changes affecting the board:

- Cindi Yates accepted the position of Director, Department of Revenue
- Nate Naismith will be retiring from state government effective April 30, 2005

2. Presentation on the Hood Canal Bridge Graving Dock

Chair Hurley acknowledged that the board had received letters from Representative Ed Murray and the Republican Caucus members of the House Transportation Committee. The letters requested that TPAB audit the Hood Canal Bridge Graving Dock program and posed a series of questions they would like answered. Chair Hurley indicated that the board would need to decide whether this audit should be recommended for approval by the LTC.

Doug MacDonald, WSDOT Secretary, introduced John Fowler, Executive Director of the Federal Advisory Council on Historic Preservation, who is in Washington this week working on the graving dock issue. Secretary MacDonald began his presentation on the Hood Canal Bridge Rehabilitation Project and the Port Angeles Graving Dock Program, and indicated that he would be presenting the highlights of the story to put in context the events that happened, when they happened, and what drove them. He stated that there would be no answers to specific questions at this time, but that he would be suggesting some things he feels are very important directions for the TPAB and Legislature to look at. Secretary MacDonald's power point presentation is electronically attached as an addendum to these minutes.

Secretary MacDonald discussed the permitting process for this project and the events that caused WSDOT to change its approach. He began by explaining that potential sites were examined for the graving dock, and indicated that WSDOT's preference was that the contractor use an existing graving facility, perhaps Concrete Tech in Tacoma, rather than develop a new facility. He then explained that the Transportation Permit Efficiency and Accountability Committee (TPEAC) was created in mid-2001. In 2002, TPEAC was instructed in statute to select three "pilot projects" to use as pilots for environmental permit streamlining. In March 2002, the Hood Canal Bridge project was selected as one of those projects. A multi-agency Inter-Disciplinary Team was then formed to work together on the permitting for this project with a strong focus on fish and aquatic concerns. As issues with the Endangered Species Act began to form regarding the Concrete Tech facility, WSDOT began to look for additional graving dock sites or options.

In June 2002, the City of Port Angeles proposed a Port Angeles site for the graving dock. WSDOT and the Inter-Disciplinary Team viewed this site as a solution to both the concerns of the Endangered Species Act and construction practicalities. In November 2002, after several permitting reviews, WSDOT announced its desire to use the Port Angeles site.

In February 2003, archaeology consultant Western Shore Heritage Services was asked to scope the survey to meet Code of Federal Regulations (CFR) Section 106 requirements. The survey concluded that there was no evidence of significant prehistoric or historic archaeological resources found within the boundaries of the proposed project site during the investigations and determined the probability for the occurrence of buried archaeological resources to be low. However, the consultant did recommend that an archaeological monitor observe ground disturbing activities during construction of the graving dock facility in those areas where excavations would exceed four feet in depth.

In August 2003, project construction started and archaeological deposits were immediately found. In accordance with the monitoring plan, the work was suspended for Section 106 review under "inadvertent discovery" regulations. During this period, the parties negotiated a Section 106 Memorandum of Agreement and a separate mitigation agreement and release between the tribe and WSDOT. This work had extensive encouragement and support from a wide variety of civic and elected leaders. Agreements were signed in early March 2004 and construction resumed. In late March 2004 the first "intact human burial" was discovered during the course of drainage work. This caused considerable spiritual concerns for the tribe's ancestral community. On December 10, after several meetings and presentations by and including tribal members, congressional members, Olympia officials, Governor Locke and the media, the tribe wrote to WSDOT asking that this project be stopped. On December 21 Governor Locke and Secretary MacDonald announced the decision to abandon the pontoon project at Port Angeles.

Secretary MacDonald stated that, in his opinion, the reason the project stopped was because neither WSDOT nor the tribe could comfortably predict the number of remains that could potentially be disturbed during the excavation. There was no way of reaching an agreement that would have satisfactorily addressed the tribe's considerable spiritual and cultural concerns about the acceptability of this construction.

Secretary MacDonald concluded by stating that there was little support or expectation to resume new burial recoveries or other approaches to return to the graving dock construction for the Hood Canal Bridge Project. He indicated that negotiations and discussions are taking place involving a "Plan B", which includes pricing new work and schedule and cost adjustments. He expressed concerns about the ownership of the site and implications of this experience for the future development of the Port Angeles waterfront. He then indicated that all other aspects of this project are on track. At the request of the Governor, Secretary MacDonald indicated that WSDOT is in the process of preparing an extensive report documenting every detail of this experience including letters, dates, etc. This report will be made available to the Legislature and TPAB when complete.

Member comments:

- Representative Beverly Woods shared concerns regarding the Cultural Resources Survey in which the trenches were only dug four feet. She felt that due to the nature of the site, and the age of the possible grave site, the trenches should have been dug deeper. Secretary MacDonald agreed this was

a great observation, however, he indicated that judgments would not be made at this time.

- Representative Deb Wallace asked about the duration of time it took to complete the Cultural Resources Survey. Secretary MacDonald indicated that the duration of the investigation spanned four days and cost \$7,000. He indicated that the report found no historic properties, and had indicated that there was a low probability of finding archaeological material on the site.
- Senator Haugen asked about the role of the Office of Archaeology and Historic Preservation (OAHP) and if they should have played a larger role in this survey. Secretary MacDonald stated that issues such as this will be addressed in the future.
- Senator Swecker shared comments/suggestions regarding the provisions of the contracts of both the archaeologist and the general contractor, and the possibility of WSDOT having their own set of standards in cases such as this, in an effort that this type of situation not be repeated.
- Representative Woods shared a concern with the amount of money spent to date on this project, and asked why the project did not stop in June 2003 when 16 remains were found. She also shared a concern regarding the amount of money spent vs. what was actually allocated to this stage of the project.
- Representative Wallace asked about the level of communication that took place between the Governor and the Legislature during this process. It was understood that questions such as this will be addressed during the audit.
- Troy Pyles asked if there was a plan to recover all the sheet piling, due to the high cost of steel. Secretary MacDonald indicated this issue is a consideration in other possible options for this project.
- Rich Perteet asked if the contract included the graving dock, as well as constructing the pontoons. Secretary MacDonald stated that the contract included all of the work, and that reports indicated this approach was the most cost-effective.

3. Discussion of Proposed Scopes of Work for Studies

Auto Theft Reduction and Enforcement

Nate Naismith, LTC staff, gave an overview of the auto theft impacts to Washington State, indicating that since 2003 there have been approximately 34,000 cars stolen, totaling an annual \$236 million problem.

Suspended Driver Licenses Enforcement

Mr. Naismith indicated that over 150,000 driver licenses are suspended annually in Washington State. It is estimated that the annual cost of death, injuries and property damage from vehicular accidents is \$5.5 billion, with a major share attributable to suspended drivers.

Chair Hurley stated that TPAB had initially requested the Department of Licensing and the Washington State Patrol to create task forces to examine these issues, however, he was informed that previous attempts by the agencies to create task forces regarding these issues failed.

Chair Hurley indicated that he directed staff to develop work plans that staff could perform at this point, to gather more information regarding these two subjects, so that by the end of the biennium, TPAB could suggest audits on these issues or have a better sense of how best to address them.

Review of Port Angeles Graving Dock Project

Steve Lerch, JLARC staff, gave an overview of the study scope and study objectives of the graving dock project. The study objectives will include site selection, environmental permitting, archaeological assessment, interactions of interested parties, fiscal review and recommendations.

A preliminary report is to be delivered to TPAB in December 2005, with a final report available in January 2006.

Member comments:

- Senator Swecker indicated that he is interested in the structure of the contracts themselves, and also in the liability in indemnification.
- Troy Pyles expressed concern as to whether or not WSDOT was using the correct type of contracting methodology. He also shared a concern with a conflict of interest issue with one of the archaeologists.
- Representative Wallace would like to further review the initial selection process of the contractor and also the communication procedures between the department, Governor and the Legislature.
- Representative Woods indicated that she would like the whole process of authorization authority reviewed.
- Rich Perteet would like to know if it would have made a difference if the graving dock construction had been separate from the overall contract.

Tom Noguchi moved and Representative Woods seconded that:

- a) The proposed scopes of work for the audit of the Graving Dock/Hood Canal Bridge Project and the studies of auto theft and suspended licenses be approved, and the LTC enter into an interagency agreement with JLARC for purposes of funding and completing the audit of the Graving Dock/Hood Canal Bridge Project.
- b) The TPAB Chair transmit a letter to the chairs and ranking minority members of the transportation standing committees of the Legislature recommending:
 - The Legislature approve funding in the 2005-07 Transportation Budget to complete the Graving Dock/Hood Canal Bridge audit, and
 - The LTC hire (or enter into an interagency agreement with another agency to retain the services of) a staff person or consultant to serve as interim TPAB Administrator through June 30, 2005, and to conduct the auto theft and suspended licenses studies for TPAB.

Motion carried.

4. Follow-up report on work plan for improvements to Capital Project Management

This item was deferred to a future meeting.

5. Presentation on the "2004 Construction Highlights Report"

This item was deferred to a future meeting.

The meeting was adjourned at 11:55 a.m.

Secretary MacDonald's presentation can be viewed at:

http://www1.leg.wa.gov/documents/lrc/tpab/handouts/HCB_Graving_Dock.pdf